

Public Health Legal Authority to Prevent and Mitigate the Spread of Communicable and Infectious Diseases and other Public Health Threats

POSITION

The Association of State and Territorial Health Officials (ASTHO) supports maintaining and guaranteeing robust public health legal authorities to facilitate prompt and targeted responses to communicable and infectious disease outbreaks. Such authorities are frequently exercised without an emergency declaration and are often supported by legislative and gubernatorial powers and responsibilities.

Officials routinely employ public health legal authority to respond to communicable disease outbreaks (e.g., measles) and other infectious disease threats (e.g., salmonella, West Nile virus). Maintaining, strengthening, and—where necessary—restoring these authorities is crucial to ensure swift responses to public health emergencies and to keep communities healthy and safe.

BACKGROUND

Public health officials have used legal authority to mitigate the spread of communicable and infectious diseases as far back as the mid-eighteenth century.^{1, 2} Public health legal authorities have also been crucial in responding to other events that threaten public health (e.g., chemical spills, hurricanes, etc.). Public health legal authority has been shown to not only protect the health and safety of communities, but also to safeguard trade and commerce.^{3, 4, 5, 6}

Many diseases, including novel and emerging pathogens, can spread quickly through our communities, schools, and workplaces. The ability to swiftly and adeptly operationalize medical and non-medical interventions through public health legal authorities must be maintained or established where necessary. Conversely, administrative burdens that delay public health action endanger the public and leave communities vulnerable to disease outbreaks and other disasters.

Several jurisdictions have seen their public health authority diluted.⁷ Limiting public health legal authority makes it harder for public health agencies to fulfill their responsibility of protecting the public by responding to disease outbreaks and other emergencies.

State and territorial policy makers should consider the consequences that insufficient public health authority will have on the ability to respond to disasters, emergencies, and other public health threats.

RECOMMENDATIONS

- **Ensure that sufficient public health legal authority exists for preventing and mitigating communicable and infectious disease outbreaks.** ASTHO recommends that legislatures ensure their jurisdiction’s public health agencies can take actions based on the best public health information available at the time to protect communities during disease outbreaks and other public health emergencies.
- **Support evidence-based laws and policies for identifying, preventing, and mitigating communicable and infectious diseases and other public health threats.** Since it is not clear how the next major disease

Summary of Recommendations

- Build and maintain sufficient public health authority to effectively respond to the disease outbreaks.
- Support public health authority that is guided by data and science.
- Provide for public health response capacity that protects the public’s interest and well-being.

outbreak will spread or how the next public health emergency will emerge, ASTHO recommends legislatures work with their jurisdiction's public health agency to identify relevant science, emphasizing that public health authorities must be ready and able to respond.

- **Ensure that laws and policies allow health agencies to meet their obligations to protect the public's health and safety.** ASTHO recommends legislatures work directly with community partners to develop public health authority that protects the wellbeing of the public, including those who may be unable to provide for their own safety and to promote public health education around these authorities.

POLICY APPROVAL HISTORY

Infectious Disease Policy Committee Approval: May 4, 2023

Board of Directors Approval: June 22, 2023

Policy Expires: June 30, 2026

ASTHO membership supported the development of this policy, which was subsequently approved by the ASTHO Board of Directors. Be advised that the statements are approved as a general framework on the issue at a point in time. Any given state or territorial health official must interpret the issue within the current context of his/her jurisdiction and therefore may not adhere to all aspects of this Policy Statement.

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¹ These authorities include but are not limited to the abatement of nuisances, investigation of the causes of disease, institution of quarantine measures, ordering individuals or groups to isolate, conducting contact tracing and case investigations, collecting data, temporarily limiting or canceling public events, temporarily restricting or closing venues, and requiring vaccination verification for certain conduct and activities (e.g., school attendance).

² Parmet WE. "Health Care and the Constitution: Public Health and the Role of the State in the Framing Era." *Hastings Const. L.Q.* 1993. 20(2):267-335. Available at https://repository.uchastings.edu/hastings_constitutional_law_quaterly/vol20/iss2/1. Accessed 10-12-2021.

³ Castillo R, Staguin E, Weston-Farber E. "The effect of state-level stay-at-home orders on COVID-19 infection rates." *Am. Journal of Infection Control.* 2020. 48(8):958-960. Available at <https://doi.org/10.1016/j.ajic.2020.05.017>. Accessed 9-28-2021.

⁴ Jeon S, Rainisch G, Lash RR, et al. "Estimates of Cases and Hospitalizations Averted by COVID-19 Case Investigation and Contact Tracing in 14 Health Jurisdictions in the United States." *J Public Health Manag Pract.* 2022. 28(1):16-24. Available at: <https://doi.org/10.1097/PHH.0000000000001420>. Accessed on 2-9-2023.

⁵ Howard J, Huang A, Li Z, et al. "An evidence review of face masks against COVID-19." *Proc. Natl. Acad. Sci.* 2021. 118 (4):1-12. Available at: <https://doi.org/10.1073/pnas.2014564118>. Accessed 9-28-2021.

⁶ Dasgupta S, Kassem AM, Sunshine G, et al. "Differences in rapid increases in county-level COVID-19 incidence by implementation of statewide closures and mask mandates — United States, June 1–September 30, 2020." *Ann Epidemiol.* 2021. 57:46-53. Available at <https://doi.org/10.1016/j.annepidem.2021.02.006>. Accessed 9-28-2021.

⁷ Weber L, Barry-Jester AM. "Over Half of States Have Rolled Back Public Health Powers in Pandemic." *Kaiser Health News.* Sept. 15, 2021. Available at <https://khn.org/news/article/over-half-of-states-have-rolled-back-public-health-powers-in-pandemic/>. Accessed 11-1-2021.